

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND**

IN RE: NEWPORT CREAMERY, INC.

**BK No: 01- 13196
CHAPTER 7**

Andrew Richardson, Trustee of the Newport Creamery, Inc. :
Plaintiff/Appellee :

Vs.

A.P. No. 01-1118

Robert E. Swain, :
Rocomi Enterprises, LLC :
Newport Creamery, L.P.; :
NewBerg, L.P. :
NewHart, L.P., and :
Tarpon Highlands Development Corporation, :
A/k/a Tarpon Highlands Development Company, LLC. :
Defendants :

**ANSWER OF DEFENDANTS TO THE CLAIMS OF
ANDREW RICHARDSON, TRUSTEE**

Now come the Defendants in the above-entitled matter, and respond as follows:

FIRST AFFIRMATIVE DEFENSE

(LACK OF JURISDICTION)

Defendants deny that the Bankruptcy Court of the District of Rhode Island has original jurisdiction over the claims presented against them under state law, including but not limited to fraudulent conveyance claims and fiduciary duty violation claims. The Bankruptcy Court lacks personal jurisdiction over defendants.

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SECOND AFFIRMATIVE DEFENSE

(Statute of limitations on 11 USC §548)

The Trustee has failed to aver any claim against Defendants Newport Creamery, LP, which purchased its assets on March 12, 1999, and NewBerg, LP, which purchased its assets on January 10, 2000, under which relief can be granted through the provisions of 11 USC §548, since the transfer of assets to such Defendants occurred more than one year after the filing of the Bankruptcy Petition on June 25, 2001.

THIRD AFFIRMATIVE DEFENSE

(NO 11 USC §549 CLAIMS)

The Trustee has failed to aver facts to support a claim against any of the Defendants under the provisions of 11 U.S.C. §549 since no payments were made by the debtor, post bankruptcy, to NewBerg, LP, New Hart LP, Rocomi Enterprises, LLC, or Tarpon Highlands Development Corporation. Payments made to Newport Creamery, LP were for rent due and payments to Robert Swain were for compensation due; and thus were not violations of 11 U.S.C. §549.

FOURTH AFFIRMATIVE DEFENSE

(LACK OF STANDING ON STATE CLAIMS)

The Trustee has no standing to bring a violation of a fiduciary duty violation claim on behalf of the Newport Creamery, Inc against Robert Swain or the unsecured creditors since the Trustee does not represent the stockholders, Rocomi Enterprises, LLC, or the unsecured creditors. Moreover, no claim on

behalf of the unsecured creditors would have existed prior to the existence of the bankruptcy filing or prior to the date of the company's insolvency.

The Trustee has no standing to bring state fraudulent conveyance claims against the Defendants on behalf of the unsecured creditors since the Trustee does not represent the stockholders, Rocomi Enterprises, LLC, or the unsecured creditors. Moreover, no claim on behalf of the unsecured creditors would have existed prior to the existence of the bankruptcy filing or prior to the date of the company's insolvency.

No unsecured creditor of the Chapter 7 Debtor, Newport Creamery, Inc. had standing to avoid any transfer by the debtor to the Defendants under applicable law as plead by the Trustee, through the provisions of 11 USC 544. Therefore the Trustee lacks derivative standing to bring such claims.

FIFTH AFFIRMATIVE DEFENSE

(Equitable Restitution)

Newport Creamery, Inc., on or about March 12, 1999, was solvent and received reasonable equivalent value, to wit, \$4,650,000, for its sale of certain properties to Newport Creamery, LP. If the total of \$4,900,000 provided by Newport Creamery, LP for the sale of real estate and from loan secured by the pledge of equipment at three locations, were fraudulent conveyances by Newport Creamery, Inc. to Newport Creamery, LP, then Newport Creamery, Inc should return such funds by suing the Rector stockholders for such funds and then return such \$4,900,000, plus interest to Newport Creamery, LP.

SIXTH AFFIRMATIVE DEFENSE

(OFF-SETS-\$1,291,549.50)

To the extent that Newport Creamery, LP has any liability to the Debtor, Newport Creamery, Inc., the debtor has an offset liability to Newport Creamery, LP for the cash paid on March 12, 1999, for loans advanced from Newport Creamery, LP to Newport Creamery, Inc., and for unpaid rents due from Newport Creamery, Inc. to Newport Creamery, LP in the sum of \$469,549.53.

To the extent that NewBerg, LP has any liability to the Debtor, Newport Creamery, Inc., the debtor has an offset liability to NewBerg, LP, for loans advanced from NewBerg, LP. to Newport Creamery, Inc., and for unpaid rents due from Newport Creamery, Inc. to Newberg, LP in the sum of \$706,686.90.

To the extent that NewHart, LP has any liability to the Debtor, Newport Creamery, Inc., the debtor has an off set liability to NewHart, LP, for loans advanced from NewHart, LP. to Newport Creamery, Inc., and for unpaid rents due from Newport Creamery, Inc. to NewHart, LP in the sum of \$115,313.07.

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel and Standing)

Andrew Richardson, the Chapter 7 Trustee and the agent of Newport Creamery, Inc, (NCI), lacks standing and is estopped from bringing any claim, including a fraudulent conveyance claim against Newport Creamery, LP for its \$4,700,00 purchase of certain realty of NCI, or a fiduciary duty violation against Robert Swain in connection with the March 12, 1999 transactions.

On March 12, 1996, using proceeds of the sale of realty to Newport Creamery, LP, the NCI Board of Directors approved, and the then stockholders of Newport Creamery, received \$7,625,000 for the redemption of their stock, prior to the sale of newly issued stock to Rocomi Enterprises, LLC. Inc.

On March 12, 1999 NCI then signed an agreement and release of liability for the benefit of the then board of directors, who had approved the sale of the realty and the stock redemption, and for the benefit of the stockholders, who received the funds, of which the Trustee complains. Thus, a claim for fraudulent conveyance, or fiduciary duty violations, with regard to the March 12, 1999 transactions, were not a claim owned by the debtor. Thus, the Trustee has no claims to adjudicate.

Moreover, if such claims existed, it would nevertheless be for the benefit of the corporation, not the creditors. Since NCI was solvent on March 12, 1999, no claim on behalf of creditors exist for breach of fiduciary duty.

EIGHT AFFIRMATIVE DEFENSE

(SOLVENCY PRIOR TO FILING AND BUSINESS EVENTS LED TO FILING)

Newport Creamery, Inc. was solvent through February of 2001. The basis for Newport Creamery, Inc. filing a Chapter 11 petition was not fraudulent conveyances or violations of fiduciary duty, but a convergence of a number of business factors in June of 2001, which include, but are not limited to the following: (i) the failure of stores purchased in Massachusetts from Bergson Dairy and Food Shops, Inc. Ice Cream and Food Shops, Inc. and purchased in Connecticut from A.C. Petersen Inc and Dino Pappas, Inc to produce the

expected income, (ii) the unrealized expenses of converting the Massachusetts and Connecticut stores, (iii) cost overruns in the production of ice cream, in part related to increased costs of buttermilk, and a temporary shutdown of the plant, (iv) drop in customer revenues related to weather and to the economy; (v), the failure of store staff to control personnel costs, and the delays incurred in converting NCI's accounting system to a computer based system. The loss of the enterprise value of Newport Creamery, Inc.'s post filing was due to negative publicity generated by representatives of some unsecured creditors, a drop in summer revenues by 18%, the mismanagement by Leland Goldberg, the designated President of the unsecured creditors, and his misleading report to the Court, and, then the mismanagement of Andrew Richardson, as trustee, his frivolous law suits against the Defendants, and his premature closing of profitable stores. The business judgments and investment decisions of Robert E. Swain in his management capacities may be disputed; however, such decisions are not subject to challenges as a tort by the Trustee.

NINTH DEFENSE

As to each averment, the Defendants, hereinafter answers. To the extent that any averment is not answered in particular by the Defendants, they neither deny nor admit such averment, but leave the Plaintiff to his proof.

1. Defendants, Newport Creamery, LP, hereinafter referred to as "NCLP", as "NewBerg, LP," "NewHart, LP", "Rocomi Enterprises, LLC", "Tarpon Highlands Development Corporation", and "Robert E. Swain", admit that averment one contains the representations of the goals of the Trustee, but

the Defendant denies that the Plaintiff, hereinafter referred to as the "Trustee", has the standing, the facts, or the law to support this averment.

2. Defendants admit in averment 2 that Andrew S. Richardson is the appointed Trustee of the Debtor, The Newport Creamery, Inc., herein after referred to as "NCI", but deny that he is duly appointed.
3. Defendants admit that the Newport Creamery, Inc did operate approximately thirty-four stores (34) in Rhode Island, Massachusetts, and Connecticut in June of 2001.
4. Defendants deny that this Court has original jurisdiction over them, or that they are residents of the State of Rhode Island.
5. Defendants admit that Robert E. Swain was the President of Newport Creamery, Inc from the end of March, 1999 to August 27, 2001. They deny that Robert E. Swain purchased Newport Creamery, Inc. The stock of Newport Creamery, Inc. was purchased in 1999 by the defendant Rocomi Enterprises, LLC from Newport Creamery, Inc as newly issued stock in March of 1999 after the redemption of the stock owned by Peter Rector and family.
6. Defendants admit that Newport Creamery, Inc. filed its Bankruptcy Petition on June 25, 2001. Defendants admit that Robert E Swain was President of Newport Creamery, Inc. when it was operated as a debtor in possession from June 25, 2001 through August 27, 2001.
7. Defendants admits that Robert E. Swain resigned as President of Newport Creamery, Inc. on August 27, 2001 and admit that as Chairman of the

Board of Directors, he then voted to elect Leland Goldberg as his successor President.

8. Defendants admit that Leland Goldberg served as President of Newport Creamery, Inc. until September 11, 2001. The Defendants admit that on September 11, 2001, the debtor's petition was converted from Chapter 11 to a Chapter 7. The Defendants admit that on September 11, 2001, Andrew S. Richardson was appointed by the U.S. Trustee as interim Chapter 7 Trustee of the Newport Creamery, Inc.
9. Defendants admit that Rocomi Enterprises, LCC is a limited liability Florida company, located in the State of Florida, which is the sole stockholder of Newport Creamery, Inc. Defendants admit that the stock of Rocomi Enterprises, LLC is owned as tenants in the entirety by Robert and Linda Swain of Florida.
10. Defendant Newport Creamery, LP admits that it is a Delaware Limited Partnership. It admits that through its Managing Partners, Newport Creamery South, LP, Robert E. Swain controls its operation. Newport Creamery, LP denies that that it owns any operational equipment, but it admits that on or about March 12, 1999 it purchased from Newport Creamery, Inc. the realty and fixtures through the mortgages from Franchise Finance Corporation of America:

(i)	699 Fall River Avenue Seekonk, MA Restaurant facility	\$660,000.00
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(ii)	781 Tiogue Avenue Coventry, RI Restaurant facility	\$655,000.00
(iii)	208 West Main Road Middletown, RI Restaurant facility, office building, ice cream manufacturing facility	\$2,100,000.00
(iv)	673 Smith Street Providence, RI	\$640,000.00
(v)	568 Putnam Pike Smithfield, RI	\$478,000.00
(vi)	2680 West Shore Road Warwick, RI	\$117,000.00

11. Defendants admit that NewBerg, LP is a Delaware limited partnership, which owned the real estate and equipment it purchased from Bergson Dairy and Food Shops, Inc. in Westboro, Massachusetts, and Cohasset, Massachusetts on or about January 10, 2000. Defendants deny that NewBerg, LP is subject to the jurisdiction of this Court. Defendants admit that Robert E. Swain is the managing partner of NewBerg, LP.

12. Defendants admit that NewHart, LP is a Delaware limited Partnership which purchased from AC Peterson Dairy, Inc., on or about July 27, 2000, the real estate and equipment of the restaurant in Bloomfield Connecticut which was, in turn, leased to Newport Creamery, Inc. Defendants also admit that NewHart, LP also leased from A.C. Petersen Dairy a store in

West Hartford, Connecticut that was then subleased to Newport Creamery, Inc. Robert E. Swain is a managing partner of NewHart, LP.

13. Defendants admit that Tarpon Highlands Development Corporation, LLC is a Florida Corporation, of which Robert E. Swain had a controlling interest. Newport Creamery, Inc has a fifty-five (55%) interest in the net profits to be generated by Tarpon Highlands Development Corporation, LLC. NCI exchanged, in January of 2001, \$750,000 in 1999 NCI promissory notes to Swain Development, to Kapok Development, to Tarpon, and others, which were made in connection with earlier loans made by Newport Creamery, Inc. to contractors and lenders of Tarpon Highlands Development Corporation, for a fifty five (55%) percent interest in the net income of Tarpon Highlands Development Company (Tarpon). Tarpon is the owner of approximately 52 developed home sites in Florida. Defendants deny that this Court has jurisdiction over Tarpon Highlands Development Corporation.
14. Defendant Robert E. Swain, by virtue of his legal positions, had management level positions in the Defendant entities, but denies that he had, as an individual, sole power over the operations and finances of those entities. Defendants deny that this Court has jurisdiction over Robert E. Swain.
15. Defendants neither admit nor deny the number of entities in which Robert E Swain is involved in the State of Florida and leaves the Trustee to his proof.

16. Defendants deny that this Court has jurisdiction over this matter as a core proceeding, pursuant to 28 USC §157(b). State fraudulent conveyance allegations and State fiduciary duty violations are neither within the core powers of the Bankruptcy Court nor within the provisions of 11USC 544(b). The parties are not within the personal jurisdiction of the Court.
17. This averment is denied. Defendants admit that defendant Rocomi Enterprises, LLC, on or about March 12, 1999, did purchase all of the newly issued shares of the Newport Creamery, Inc. The Defendants admit that Robert E. Swain and Linda Swain, as tenants by the entirety, are the shareholders of Rocomi Enterprises, LLC.
18. Averment 18 is denied. The allegation that the initial purchase of Swain was highly leveraged is untrue and a misleading opinion. This averment is misleading because it combines the balance sheet of the debtor, Newport Creamery, Inc. with the balance sheet of a non-debtor, Newport Creamery, LP. According to note 1 (B) Rocomi Enterprises, LLC purchased newly issued stock of Newport Creamery, Inc. with a cash contribution of approximately \$248,000. The equity of NCI after closing was \$ 2,082,872, not -\$22,515 as averred. If equity in the NCI and NCILP were combined, then equity of both entities would be \$167,028.
19. This averment is denied. There was adequate working capital remaining and not all of the assets were converted and redeemed. Debts were paid by NCI as they became due for two years thereafter. However it is admitted that the former stockholders, during the tenure of Peter Rector,

through their stock redemption, did remove \$7,625, 900 of equity from NCI prior to Rocomi Enterprises, LLC purchasing the newly issued stock of NCI after the redemption. To the extent that such funds paid to the Rector stockholders were necessary to pay creditors two and one half years later, then the Rector stockholders have a duty to restore such funds; and the debtor then has a subsequent duty to restore to Newport Creamery, LP, its purchase funds of \$4,900,000 with interest.

20. This averment is denied. Under the direction of the Peter Rector board, the Newport Creamery, Inc. sold its real estate to Newport Creamery, LP for \$4,700,000 cash. Newport Creamery, Inc. then also pledged to Newport Creamery, LP certain equipment at three locations in order that Newport Creamery, Inc. would receive \$250,000 in loan proceeds to Newport Creamery, LP from Franchise Finance Corporation of America.
21. The averment is denied. NCI received equivalent cash value for its sale to Newport Creamery, LP. The Newport Creamery received the same approximate value placed upon the assets by a third party appraiser selected by the former management of the company and the same value placed on such assets in the report of the auditors, Rooney, Plotkin, & Willey, LLP on July 6, 1999. Four of outside appraisals were later confirmed in January, 2001 by another independent appraisal firm.
22. This averment is denied. The allegation that NCI was insolvent on March 12, 1999 as a result of the sale of real estate to Newport Creamery, LP is false and is contradicted by the independent audit of Rooney, Plotkin, &

Willey, LLP. NCI received an unqualified opinion from its independent accountant, Rooney, Plotkin & Willey as of March 31, 1999, 2 weeks after the transaction closed. The report was issued on July 6, 1999. The auditors had four additional months to further review the solvency of the company before issuing their final clean opinion.

23. This averment is denied in part and admitted in part. The averment is correct in stating that during the time in which Robert Swain was President of Newport Creamery, Inc, Newport Creamery, Inc. opened new stores in Massachusetts and Connecticut. Newport Creamery, Inc., however, did not purchase the real estate at such locations. The opening and operations of such new store locations, however, were financed by Newport Creamery, Inc. in the same method as any other store. Newport Creamery, Inc. leased the use of such properties and then borrowed money to refurnish the former Dino Pappas stores, A.C. Petersen Stores, and Bergson Dairy and Food Shops, Inc. Ice Cream stores as Newport Creamery, Inc. stores.

24. This averment is denied. The inference contained in this averments that Newport Creamery, Inc. (NCI) either sold assets owned by NCI to NewBerg, LP and to NewHart LP or financed such purchases by cash of NCI is false. The real estate and equipment in question was purchased (not transferred from the debtor) by the relevant partnership directly from third party sellers with consideration paid directly by the defendant partnerships from their own funds. The purchase of the real estate and

equipment from Bergson Dairy and Food Shops, Inc. by NewBerg, LP were financed by BankRI. The purchase of the real estate in Bloomfield, Connecticut, by New Hart, LP from AC Peterson Dairy was financed by FFCA.

25. This averment is denied in part and admitted in part. NewHart owned the real estate in one location and the lease in another location and equipment in two locations. NewBerg, LP owned the real estate in one location, Westborough, Massachusetts, and owned the lease in another location, to wit, Cohasset, Massachusetts. The equipment at all NewBerg, LP and NewHart, LP stores was purchased from third parties.
26. This averment is untrue. Newport Creamery, Inc. provided no funds to NewHart, LP and to NewBerg, LP which was used to purchase, from third parties, their real estate premises, leases, and equipment. After Newport Creamery, Inc. leased those locations from NewHart, LP and NewBerg, LP, NCI received the rent income from those locations and use those rents to pay the expenses at those locations. NewBerg, LP and NewHart, LP did loan substantial funds to NCI; however, at no time did NCI fund the operation of the lessor partnerships.
27. This averment is denied. NCI did not transfer any assets to NewHart, LP or to Newberg, LP for their purchase of assets from third parties which would involve an issue of equivalent value. The rents paid by NCI to NewHart, LP and NewBerg, LP were reasonable.

28. This averment was denied. In January of 2000 when NewBerg, LP purchased its real estate from a third party, NCI was not insolvent; and whether it was or not, is irrelevant, since NCI conveyed nothing to NewBerg, LP. In July of 2000 when NewHart, LP purchased real estate from a third party, NCI was not insolvent; and whether it was or not is irrelevant since NCI sold nothing to NewHart LP.
29. This averment is denied. NewHart, LP and NewBerg, LP purchased properties and purchased leases which did not involve "hard assets" of NCI. Newport Creamery, LP paid NCI for the purchase of real estate, to wit, "hard assets" the sum of \$4,700,000. Thus, NCI did convert a "hard asset", real estate, to cash. Such cash was then removed by the Rector directors as part of their stock redemption. Nevertheless, according to the March 28, 1999 balance sheet of NCI, NCI had other assets of property, plant, land and equipment worth \$3,773,648, after the NCLP purchase of six properties.
30. This averment is denied in part and admitted in part. When NCI was solvent in 1999 and in early 2000, NCI lent funds totaling \$750,000 to various entities, which were hired by Defendant Tarpon Highlands Development Corporation to develop residential lots in Florida. Such NCI funds were derived substantially from loans made by mortgages upon assets of NCI and from funds lent by NCLP and NewBerg, LP. Thereafter, in January of 2001, NCI exchanged those promissory notes from entities developing Tarpon Highland Development Corporation, LLC for a 55%

interest in net income of Tarpon Highland Development Corporation. The value of the 55% interest exceeded the value of the \$750,000 in notes exchanges by NCI for such interest.

31. This averment is denied. The averment that between November 2, 1999 and August 27, 2001 that Robert and Linda Swain received \$556,057.58 from NCI without equivalent value is denied. All the funds identified in this averment were funds of NCLP, not those of the debtor, NCI. Any other payments were loans which were converted to income. The Trustee is confusing funds received from Newport Creamery, LP by Robert and Linda Swain. Any funds used to support Robert Swain's lifestyle received from NCI was otherwise compensation paid to him from NCI. Two loans from NCI in the amount of \$70,000 during April and May 2001 made to Robert Swain were repaid during May, 2001 with two payments totaling \$150,000.

32. This averment is denied. Robert Swain, in his capacity as an executive for the Plaintiff, NCI, and for the Defendants, did direct that NCI and the defendant entities adhere to generally accept accounting standards. Swain hired C.P.A's whose duties were to ensure that all accounting transactions between and among the Defendants and NCI were properly booked according to the Generally Accepted Accounting Standards.

33. The averment is denied. NCI between June 2001 and August 27, 2001 did properly record inter-company transactions. Certified public

accountants hired as comptrollers for NCI followed generally accepted accounting practices in recording accounting transactions.

34. The averment is denied. The rents paid by NCI to NCLP, NewHart, LP, and NewBerg, LP were not in excess of the fair rental value for such properties. The rents actually paid by NCI on Defendants' premises were substantially less than required under lease agreements between the debtor and the partnerships. The rents on the mortgaged premises were to be set by the mortgage lenders to be a multiple of 1.25 times the monthly amount of debt service. The bankruptcy schedules prepared by NCI indicate that substantial rent arrearage and loan repayments are due Newport Creamery, LP, New Hart, LP, and NewBerg, LP from NCI.
35. This averment is denied in part and admitted in part. It is correct only to the extent that the Newport Creamery Foodservice, Inc. was incorporated in April, 2001 in Delaware to operate the wholesale ice cream business formerly operated by Newport Creamery, Inc. from April of 2001 forward. After April of 2001, the wholesale ice cream manufacturing business was operated as a separate unit from the operations of NCI. Newport Foodservices, Inc. is not a party to this litigation.
36. This averment is denied. The funds transferred by NCI to Newport Creamery Foodservice, Inc. were used to pay for the cost of the manufacturing of the ice cream sold to NCI, which was then re-sold to the operating stores of NCI. The funds received by Newport Creamery Foodservice, Inc. were used to purchase ingredients, pay employees, and

rent, and to produce ice cream. When the Trustee in September of 2001 illegally evicted employees of Newport Creamery Foodservice, Inc from the premises, there was \$156,000, at cost, in ice cream in the freezers of Newport Creamery Foodservice, Inc. waiting to be shipped. The value of the ice cream shipped was at a transfer cost lower than those prices available from third parties, and, in some cases, below breakeven costs for Newport Creamery Foodservice, Inc.

Newport Creamery Food Services, Inc. did transfer eighty-five thousand dollars (\$85,000) during August, 20001 to Rocomi Enterprises, Inc, its shareholder, to hold as a winter reserve for overhead costs. NCI received ice cream products reasonably equivalent in value to the funds it paid to Newport Creamery Food Services, Inc. NCI made no transfer of funds to Rocomi Enterprises, Inc. In any event, to assist in financing the NCI operation, Rocomi loaned \$97,913.06 directly to the DIP account during August, 2001.

37. This averment is denied. Related entities in which Swain was involved, in fact, lent more than \$1,300,000 to NCI as set forth in NCI's bankruptcy petition. The only cash taken out of the debtor, NCI, other than salary, by Swain, was \$70,000 in short term loans which was repaid during June 2001 with two checks totaling \$150,000.
38. This averment is denied. No payments were made by NCI during the term of Robert E. Swain which were not justified by his business judgment and which were not for value received.

39. This averment is neither admitted nor denied, but the Trustee is left to his proof. However, had NCI been allowed to execute the plan it proposed in August of 2001, post petition liabilities would have been current within a twelve month period.
40. This averment is denied. During the tenure of Leland Goldberg, NCI paid Newport Creamery Food Service, Inc. for the cost of ice cream ordered by NCI at posted transfer prices less than available from third parties for 10% quality product. Such prices were reasonable.
41. This allegation is denied. When Robert E. Swain was President of Newport Creamery, Inc, no "hard assets" were transferred from NCI. All payments made by NCI during such tenure were for value received.
42. This averment is denied. Financing is not necessary to maintain the operations of NCI. Most of the competing restaurant chains do not own their real estate. They lease it. Only unprofitable store operations need to be closed.
43. This averment is denied. There was a lender available to make loans without security.
44. This averment is denied. The Trustee can operate the stores of NCI without ownership of the property of Newport Creamery, LP, NewHart, LP, and NewBerg, LP.
45. This averment is denied. The transfer of the real estate by NCI to NCLP in March of 1999 was made for value, to wit, \$4,900,000, and such transfer was beyond the statute of limitations contained in 11 USC 548

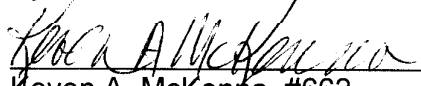
and is not a violation of R.I.G.L. §6-16-4. The purchase by NewHart, LP of realty from A.C. Peterson Dairy, Inc in July of 2000 for cash was not a fraudulent conveyance from Newport Creamery, Inc. and thus neither R.I.G.L. §6-16-4 is applicable nor is 11 USC §548. The purchase by NewBerg, LP of realty from Bergson Dairy and Food Shops, Inc. on or about January 10, 2000 for cash was not a fraudulent conveyance from Newport Creamery, Inc.; and, thus neither R.I.G.L. §6-16-4 is applicable nor is 11 USC §548. Moreover, such NewBerg, LP transaction occurred more than one year prior to the bankruptcy filing and thus, the provisions of 11 USC §548 are not applicable. No rent payments were made to NewBerg, LP and NewHart, LP by NCI since NCI filed for bankruptcy, therefore, the provisions of 11 USC§ 549 relating to post bankruptcy payments are not applicable. Rent payments for July were paid to NCLP and no other payments; thus, 11 USC§ 549

46. The Trustee's opinion that the sale of NCI requires the assets of NewBerg, LP, Tarpon Highlands Development Corporation, Inc, Newport Creamery, LP, and NewHart, LP is without foundation and is denied. No stores are operated on the premises of NewHart, LP, NewBerg, LP, or Tarpon Highlands Development Corporation.
47. This averment is denied. There were no fraudulent transfers and thus, there were no damages from such actions.

48. This averment is denied. Swain is not currently in control of any funds of the NCI. The Trustee has an adequate remedy at law. He is seeking damages.

Wherefore, Defendants pray that judgment be entered against Plaintiff, Andrew Richards on Count I, with an award of costs, and reasonable attorneys' fees.

Defendants
By Their Counsel



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**DEFENDANTS SWAIN DEMANDS TRIAL BY JURY ON EVERY AVERMENT
AND DEMAND FOR RELIEF IN COUNT I.**

COUNT II

The answers of the Defendant set forth above to averments one through forty-eight are hereby restated by reference and incorporated herein.

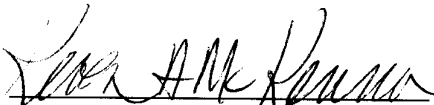
49. This averment is denied. Swain had no fiduciary duty to conduct the affairs of the NCI in the best interest of the creditors. His duty was to the stockholders.

50. This averment is denied. Swain has denied that he committed the acts alleged in this averment.

51. This averment is denied. Swain has denied a breach of fiduciary duty; Swain denies any duty to creditors; and none of the acts alleged, if committed, could have caused any damage to the unsecured creditors.
52. The averment is denied. The Rector shareholders received \$7,600,000 of NCI assets. The actions of Leland Goldberg and The Trustee, Andrew Richardson, destroyed the enterprise value of the company, and thus denied the possibility of the unsecured creditors from receiving any payment of their claims.

WHEREFORE, Defendant Swain demands judgment against the Plaintiff, Andrew Richardson, an award of attorney fees, and cost, and such other relief which is just and equitable.

Defendants
By Their Counsel



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**DEFENDANT SWAIN DEMANDS TRIAL BY JURY ON EVERY AVERMENT
AND DEMAND FOR RELIEF IN COUNT II.**

**FIRST COUNTERCLAIM
(ABUSE OF PROCESS)**

1. The Plaintiffs herein are certain Defendants to the above entitled adversary complaint brought by the Trustee, Andrew Richardson, to wit, Rocomi Enterprises, LLC; NewBerg, LP, NewHart, LP, and Newport Creamery, LP.
2. The Defendant herein is Andrew Richardson, as an individual and in his official capacity as the Chapter 7, Trustee for Newport Creamery, Inc.
3. Plaintiffs hereby restate and include by reference their answers and affirmative defenses set forth in answer to the above-entitled complaint by Andrew Richardson.
4. Andrew Richardson has indicated in his pleadings and his statements that emergency existed on or about September 18, 2001 which required that he file the above-entitled complaint against the Defendants herein and to gain control of the property of the defendants.
5. On or about September 18, 2001 in his pleading and in his statements Richardson stated that he needed to have the ability to sell and control the property of the Defendants related to Newport Creamery, Inc in order that he could sell their assets with those of Newport Creamery, Inc in order to maintain the enterprise value of the debtor, Newport Creamery, Inc.
6. Andrew Richardson was appointed Trustee on September 11, 2001.
7. Prior to filing his complaint against the Defendants the Trustee failed to investigate and to research the validity of the claims brought against the Defendants.
8. In reckless disregard of the lack of law and fact to support his claims for fraudulent conveyance against Newport Creamery, LP, NewHart, LP, and


NewBerg, LP, Rocomi Enterprises, LP, Robert E. Swain, the trustee, Andrew Richardson, nevertheless filed fraudulent conveyance claims against such parties because of an ulterior purpose, to wit, to control and sell the properties of the Defendants for the benefit of the Trustee.

9. At hearings on September 14 and 18, in either reckless disregard of or without review of actual legal and accounting records in his possession, the Trustee presented affidavits from Richard Fenstermaker, Keith Lowey, and Peter Scotti and subsequent testimony from Lowey and Scotti, these affidavits and testimony were manipulated based on incorrect facts and partial analysis to mislead the Court.
10. The purpose of such lawsuit was not to collect damages for alleged fraudulent conveyances, but to obtain control of property to which the Trustee otherwise had no legal right to control and/or sell. Prior to the filing of his suit, the Trustee had met with third parties who desired to purchase the operations of the Newport Creamery, Inc, the debtor, but such parties indicated to the Trustee they would not purchase the debtor 's operation unless they could purchase the properties of the defendants that were leased to NCI. The Trustee knew that the debtor had no "hard assets" to sell. At the time of filing his suit the Trustee stated that he could not obtain funds from the sale of the assets of the Debtor, Newport Creamery, Inc without selling the assets of the Defendants, NewHart, LP, NewBerg, LP, and Newport Creamery, LP; and, by consequence of such sale obtain funds to pay his fees and the legal fees of his law firm.

11. The Trustee brought such fraudulent conveyance claims against Defendants Newport Creamery, LP, NewHart, LP, and NewBerg, LP for an ulterior purpose, to wit, to gain control of property to which he would otherwise not legally have a claim. Such complaint was an abuse of process against Defendants Newport Creamery, LP, NewHart, LP, and NewBerg, LP.
12. As a consequence of such abuses of process, the Defendants herein incurred legal fees and costs, damages to their business operations, reputations, and the loss of some of their assets, and other compensatory and punitive damages in excess of the jurisdictional amounts of this Court.

Wherefore, Newport Creamery, LP, NewHart, LP, and NewBerg, LP, individually, jointly, and severally demand judgment against the Trustee Andrew S. Richardson in the estimated amount of seven million six hundred thousand dollars (\$7,600, 000) in compensatory, and punitive damages.

Newport Creamery, LP
NewHart, LP
NewBerg, LP
By Their Counsel


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SECOND COUNTERCLAIM
(Malicious Prosecution, Property Rights Damages)

13. Averments one (1) through eleven (11) are hereby averred hereinafter and incorporated by reference.
14. The Plaintiff herein is Robert E. Swain, NewBerg, LP, NewHart, LP, and Newport Creamery, LP.
15. The Defendant herein is Andrew Richardson in his capacity as Trustee for Newport Creamery, Inc.
16. Without probable cause, and with malice, the Trustee falsely averred that money received from Newport Creamery, LP was money received from the Debtor, Newport Creamery, Inc; and then defamed Swain by inferring falsely that money wrongly received by Swain from Newport Creamery, Inc. was used for his personal life style and that those expenses were the cause for unsecured creditors not being provided money. In his public statements and comments to the media, which were published in Rhode Island, Florida, and other states, the Trustee and his agents, provided a false impression that Swain was engaged in activities that were criminal in nature, although civil, such as misuse of funds, i.e. embezzling, fraud, wrongful taking of funds, from Newport Creamery Inc. These statements were made with malice and with the intention to cause Swain harm.
17. Without probable cause, and with malice, the Trustee averred falsely that funds paid the Newport Creamery, Inc for purchase of ice cream were funds

used for his personal use, and thus, put him in a false light causing further defamation of his good name and reputation.

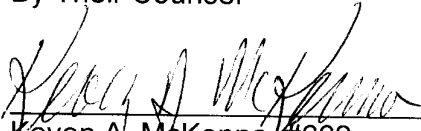
18. Without probable cause, and with malice, the Trustee falsely averred that Swain transferred hard assets from Newport Creamery, Inc, to Newport Creamery, LP, NewBerg, LP, and NewHart, LP, without consideration, making it impossible for NCI to operate.
19. Without probable cause, and with malice, the Trustee, and his agents, wrongfully averred that Swain engaged in the fraudulent transfer of assets.
20. The Trustee outside of the judicial forum repeated his misleading averments to members of the media.
21. Having misled the Bankruptcy Court with his averments and incomplete affidavits, the Trustee obtained a court order that allowed him to control the assets and the income of Robert E. Swain, the assets of Defendants Newport Creamery, LP, NewHart, LP, and NewBerg, LP and defamed Swain's profession as an investment businessman.
22. The Trustee then intentionally abused the discretion granted to him, with malice, acting under the color of law, to wit, through a court order, to deny the Defendants' property rights as they are protected by the Fourth Amendment, Fifth Amendment, and Fourteenth Amendment of the U.S. Constitution, as secured by the provisions of 42 USC § 1983, (i) by not allowing Swain to earn a living and spend his money as so determines, (ii) by not allowing Defendants NewHart, LP, NewBerg, LP, and Newport Creamery, LP to operate, (iii) by denying them rental income due from NCI; and (iv) by

treating the Plaintiffs' property as if the Trustee had confiscated those rights with a reckless disregard of their financial obligations to non NCI creditors, all in an apparent attempt to force them into bankruptcy so that the trustee could gain further control of their assets for the benefit of Newport Creamery, Inc.

23. As a consequence of the Trustee's wrongful acts, the Defendants caused the Plaintiffs to suffer compensatory and punitive damages in excess of ten million dollars (\$10,000,000), including but not limited to damages caused by Robert S. Swain's loss of his business reputation, to the loss of Swain's business holding, and the destruction of the assets of NewBerg, LP, the loss of income to Newport Creamery, LP, and to NewHart, LP.

Wherefore, the Defendants' Robert Swain, Rocomi Enterprises, LLC, NewBerg, LP, NewHart, LP, and Newport Creamery, LP demand judgment against the Trustee, Andrew Richardson, in his representative capacity and in his individual capacity, as the case may be for compensatory and punitive damages in excess of the jurisdictional amount of the Court, and reasonable attorney's fees and costs.

Newport Creamery, LP, Rocomi
Enterprises, LP, NewHart, LP,
NewBerg, LP, and Robert E. Swain
By Their Counsel



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THIRD COUNTER CLAIM

(NEWPORT CREAMERY, LP'S POST PETITION RENT CLAIM)

24. The Plaintiff herein is Newport Creamery, LP, a Delaware Limited Partnership.
25. The Defendant is Andrew Richardson, in his capacity as the Chapter 7 Trustee for Newport Creamery, Inc.
26. Newport Creamery, LP is the owner of seven leaseholds at which Newport Creamery, Inc has operated stores since the filing of the Newport Creamery, Inc.'s bankruptcy petition on June 25, 2001.
27. Newport Creamery, Inc has not obtained judicial approval of any rejection of a lease between Newport Creamery, Inc and Newport Creamery, LP.
28. Newport Creamery, Inc has leased the following premises from Newport Creamery, LP at the following base rents plus taxes and common area and maintenance charges
- (i) 699 Fall River Avenue, Seekonk, MA, 02271 at a monthly base rent of \$ 9,175.31 plus annual property taxes of \$19,600;
 - (ii) 781 Tiogue Avenue, Coventry, RI, at a base monthly rent of \$8,343.76;
 - (iii) 208 West Main Road, Middletown, RI Restaurant facility, office building, ice cream manufacturing facility, at base monthly base rent of \$ 25,794.36 plus annual taxes of \$21,557.28;
 - (iv) 673 Smith Street, Providence, RI at a base monthly rent of \$8,522.07 plus annual property taxes of \$14,503.59;

- (v) 568 Putnam Pike, Smithfield, RI at base monthly rent of \$6,178.16;
- (vi) 2680 West Shore Road, Warwick, RI , at a base monthly rent of \$ 2,636.60 plus annual property taxes at \$15,523.34; and,
- (vii) Kings Hwy - New Bedford, Massachusetts, sublease, at a base monthly rent of \$4,172.00 plus annual property taxes of \$10,810.00 and a monthly common area and maintenance charges of \$ 2,254.00

29. Newport Creamery, Inc, since filing bankruptcy on June 25, 2001 has incurred a base monthly rent liability to Newport Creamery, Inc. of \$64,822.26 and a four month liability on base rents of \$262, 489.04

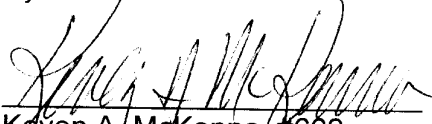
30. Newport Creamery, Inc, since filing of bankruptcy on June 25, has incurred a property tax, and common area charge for four months of \$21,062.

31. Newport Creamery, Inc. by and through its trustee, owes Newport Creamery, LP for rent and related charges, post petition, the sum of \$283,551.04.

32. The trustee has refused to pay the post petition rents due to Newport Creamery, LP.

Wherefore, Newport Creamery, LP demands judgment against Newport Creamery, Inc., by and through the Trustee, Andrew Richardson, in the amount of \$283,551.04 plus interest and costs.

Newport Creamery, LP
By Their Counsel


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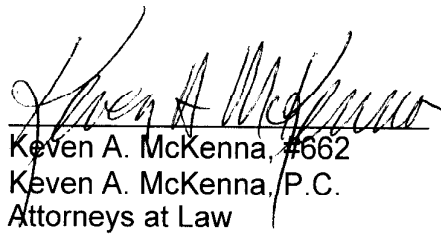
FOURTH COUNTERCLAIM

(NEWBERG, LP'S POST PETITION RENT CLAIM)

33. The Plaintiff herein is NewBerg, LP, a Delaware Limited Partnership.
34. The Defendant is Andrew Richardson, in his capacity as the Chapter 7 Trustee for Newport Creamery, Inc.
35. NewBerg, LP is the owner of several leaseholds at which Newport Creamery, Inc. had operated stores and, although such stores have been closed since the filing of the Newport Creamery, Inc.'s bankruptcy petition on June 25, 2001, Newport Creamery, Inc has not obtained judicial approval of any rejection of a lease between Newport Creamery, Inc and NewBerg, LP.
36. Newport Creamery, Inc. has leased those premises from NewBerg, LP at a monthly rent of \$18,928.67
37. Newport Creamery, Inc., since filing bankruptcy on June 25, 2001 has incurred a base monthly rent liability to NewBerg, LP in sum of \$75,714.68.
38. Newport Creamery, Inc. by and through its trustee, owes NewBerg, LP, post petition, the sum of \$75,714.68.
39. The trustee has refused to pay the post petition rents due to NewBerg, LP.

Wherefore, NewBerg, LP demands judgment against the Newport Creamery, Inc, by and through the Trustee, Andrew Richardson, in the amount of \$75,714.68 plus interest and costs.

NewBerg, LP
By Their Counsel



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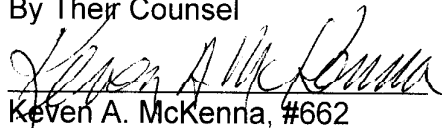
FIFTH COUNTERCLAIM

(NEWHART LP'S POST PETITION RENT CLAIM)

40. The Plaintiff herein is NewHart, LP, a Delaware Limited Partnership.
41. The Defendant is Andrew Richardson, in his capacity as the Chapter 7 Trustee for Newport Creamery, Inc.
42. NewHart, LP is the owner of one leaseholds at which Newport Creamery, Inc had operated stores and, although such store has been closed since the filing of the Newport Creamery, Inc.'s bankruptcy petition on June 25, 2001, Newport Creamery, Inc has not obtained judicial approval of any rejection of a lease between Newport Creamery, Inc and NewHart, LP until October of 2001.
43. Newport Creamery, Inc. has leased those premises from NewHart, LP at a monthly rent of \$12,731.16.
44. Newport Creamery, Inc, since filing bankruptcy on June 25, 2001 has incurred a base monthly rent liability to NewBerg, LP in sum of \$50,924.64.
45. Newport Creamery, Inc. by and through its trustee, owes NewHart, LP, post petition, the sum of \$ of \$50,924.64.
46. The trustee has refused to pay the post petition rents due to NewBerg, LP.

Wherefore, NewHart, LP demands judgment against the Newport Creamery, Inc, by and through the Trustee, Andrew Richardson, in the amount of \$50,924.64 plus interest and costs.

NewHart, LP
By Their Counsel



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CROSS CLAIM AGAINST RECTOR STOCKHOLDERS, RECTOR BOARD OF DIRECTORS, AND THE TRUSTEE FOR INDEMNIFICATION.

47. The Plaintiffs for the purposes of this cross claim are the named Defendants to the Trustee's Andrew Richardson claims for alleged fraudulent conveyances and breach of fiduciary duties related to the actions of Newport Creamery, Inc. in March of 1999. Those Plaintiffs would be Newport Creamery, LP, Rocomi Enterprises, LLC, and Robert E. Swain.
48. The Defendants in this counterclaim are Newport Creamery, Inc, by and through its Trustee, Andrew Richardson, for the return of funds NCI received from NCLP, the former members of the NCI board of Directors, named hereinafter, who approved the removal of funds from NCI, and the former stockholders of NCI, named hereinafter, who received the funds of the

Corporation which the Trustee has complained as the cause of NCI's insolvency in 2001.

49. Plaintiffs' averments in their answers to the complaint of the Trustee and their averments in their counterclaims are hereby incorporated by reference within this counterclaim.

50. On March 10, 1999, the members of the Board of Directors of Newport Creamery, Inc, Peter W. Rector, Elizabeth M. Meyers, Robert W. Radway, and Peter S. Damon approved two resolutions: to wit,

RESOLVED: That the Corporation is hereby authorized to sell and transfer six (6) parcels of real estate owned by the corporation located at in Rhode Island at 208 West Main Road in Middletown, Smith Street in Providence, Tiogue Avenue in Coventry, Greenville Avenue in Smithfield and West Shore Road in Warwick, and in Massachusetts at Fall River Avenue in Seekonk, to Newport Creamery, LP a Delaware limited partnership, for a purchase price of approximately Four Million Seven Hundred Thousand Dollars (\$4,700,000); and

RESOLVED: That the Corporation is hereby authorized to effect a redemption of all if the issued and outstanding common stock of the Corporation from the shareholders of the Corporation for an aggregate purchase price per share of \$7,310.64 per share, less costs and expenses associated with the transaction

51. On or about March 12, 1999, Newport Creamery, LP purchased several pieces of real estate from Newport Creamery, Inc. for \$4,700,000 and advanced Newport Creamery, Inc. loan proceeds in the amount of \$250,000 on an equipment pledge on three locations.

52. In this cross claim, the defendant Board of directors are Peter W. Rector, Elizabeth M. Meyers, Robert W. Radway, and Peter S. Damon, individually, jointly, and severally, hereinafter referred to as the Defendant Board.

53. In this cross claim, the defendant stockholders, who are being sued individually, jointly, and severally, and, hereinafter are referred to as the "Rector stockholders", are the following persons and entities:

NAME:	SHARES:
Mason D. Rector-Family Trust C/O Elizabeth M. Myers, Esq. 1500 Fleet Center Providence, RI 02903	491
Peter W. Rector 101 Harrison Avenue Newport, RI 02840	351
Trust U/W Daisy Palmer F/B/O Gene Palmer et al C/O US Trust Co. of New York 114 West 47 th Street New York, NY 10036	25
Fred and/or Helen Patykewich 36 Portsmouth Avenue Staten Island, NY 10301	15
Lynn Summers 8 Glenview Knoll Iowa City, Iowa 52240	11
Anne H. Lawton 54 Jar Brook Road Halliston, MA 01746	11
Estate of John E. McGoff C/o Barry McGoff 698 Black Point Lane Portsmouth, RI 02871	10

Francis G. Dwyer 513 Paradise Avenue Middletown, RI 02842	1
William H. Jensen 170 West 75 th Street Apt. 4S New York, NY 10023	4
C. Weber Jensen 170 West 109 th Street Apt. 5W New York, NY 10025	3
Revocable Inter Vivos Trust Of Charles A. Hambly 53 Ayrault Street Newport, RI 02840	70
Harriet D. Reed C/o US Trust Co. of Florida 132 Royal Palm Way Palm Beach, FL 33480	25
David M. Rector 40205 Ladene Lane Novi, MI 48375	4
Paul D. Rector 514 East 88 th St/ #3B New York, NY 10128	3
William R. Harvey 194 Third Beach Road Middletown, RI 02842	10
Robert W. Radway And Gloria Radway as Joint Tenants 14 Drowne Parkway Rumford, RI 02916	1
Peter S. Damon 280 Indian Avenue Middletown, RI 02842	1
Owen P. Reid, Jr.	2

5177 Diamond Heights Blvd.
San Francisco, CA 94131

Eleanor Kelly 18547 Shawnee Drive Spring Lake, MI 49456	2
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John T. Reid 362 Benefit Street Providence, RI 02903	2
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Joachim A. Weissfeld 50 Clarke Road Barrington, RI 02806	1
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Treasury Shares	7
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Preferred Stock

Peter W. Rector	15
Judith C. Rector	29

54. On March 12, 1999, the Newport Creamery, Inc. redeemed all of its 1,043 issued and outstanding shares by paying to the Defendant Rector shareholders the sum of \$7,625,000. The sources of funds used by NCI to pay for the redemption price to the Defendants were created by the following transactions of NCI:

-Net proceeds from sale of real estate to NCLP and loan on equipment:	\$4,765,764;
-Net proceeds from fixtures and equipment financing:	\$1,428,785;
-Assignment of cash surrender value of key person policies	\$ 938,169;
-Capital Contributed by Rocomi Enterprises, LLC	\$248,000;
-Loan from Peter Rector	\$225,000
- Cash from Newport Creamery, Inc.	<u>19, 242</u>
Total Redemption Payments:	\$7,625,000

55. The Trustee, Andrew Richardson, complains in the above entitled matter, that the removal of \$7,625,000 in assets from the Newport Creamery, Inc by vote of the former Board of Directors to redeem the stock of the former stockholders, Defendants hereto, left insufficient work capital in the Corporation to pay future creditors, apparently, pursuant to the provisions of R.I.G.L. §6-16-4; and thus, asks that such money be resorted by Rocomi Enterprises, LLC, Newport Creamery, LP, and Robert E. Swain as damages. The Trustee further requests that Newport Creamery, LP reconvey, without consideration, the property which Newport Creamery, Inc had conveyed to Newport Creamery, LP in March of 1999.
56. On March 12, 1999, without consideration, Newport Creamery, Inc., Robert E. Swain, and Newport Creamery released the Rector Board and Rector stockholders from any liability arising in connection with the sale of real estate by Newport Creamery, Inc to Newport Creamery, LP. Such release is against public policy, null and void, and with effect as to the claims brought by the Trustee in his derivative capacity.
57. If the Trustee's allegations are found to be true, it would have been the wrongful removal conversion of the assets of Newport Creamery, Inc by the Rector stockholders, as wrongfully authorized by the Rector Board of Directors, which caused Newport Creamery to have insufficient operating capital to pay future unsecured creditors.
58. To the extent that the Trustee, Andrew Richardson, obtains such relief against Rocomi Enterprises, LLC, Newport Creamery, LP, and/or Robert E.

Swain, Rocomi Enterprises, LLC, Newport Creamery, LP, and Robert E. Swain demand that the Trustee, as the agent of Newport Creamery, Inc. reimburse Newport Creamery, LP for the \$4,700,000 paid to NCI for the properties sold; that the Rector defendants reimburse and indemnify Rocomi Enterprises, LLC, Newport Creamery, LP, and Robert E. Swain for the amount of any judgments with interest, attorney fees and costs entered against them on the demand of the Trustee.


59. Such judgments against Rocomi Enterprises, Newport Creamery, LP, and Robert E. Swain would cause an unjust enrichment of NCI and the Rector stockholders who were the beneficiaries of an action that would have been determined to have been an illegal act, and have caused harm to the Defendants herein.

Wherefore, Rocomi Enterprises, LLC, Newport Creamery, LP, and Robert E. Swain pray judgment be entered against the Defendants hereto individually, jointly, and severally as follows:

- (i) Declare that the release signed on or about March 12, 1999 by Newport Creamery, Inc; by Newport Creamery, LP, and Robert E. Swain is void;
- (ii) Declare the sums of money adjudged to be the liability of Newport Creamery, LP, Robert E. Swain, and Rocomi Enterprises, LLC which are judgments for which the Defendants hereto are liable to the Plaintiffs hereto;

- (iii) Order the Defendants hereto to indemnify and the Plaintiffs hereto for such judgments incurred by the Plaintiffs as a consequence of the Defendants acts herein;
- (iv) Provide for such other relief which is just and equitable.

Newport Creamery, LP, Rocomi
Enterprises, LP, and Robert E. Swain
By Their Counsel


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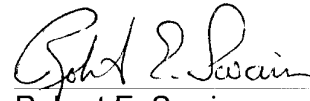
Newport Creamery, LP, Rocomi Enterprises, LP, Robert E. Swain, NewHart, LP, Newberg, LP, and Tarpon Highlands Development Corporation demand trial by jury.

ATTESTATION

Now comes Robert E. Swain, being duly sworn, and depose, and sayeth as follows:

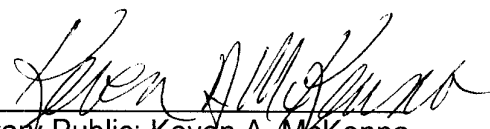
1. I am Robert E. Swain of the State of Florida.
2. I am an individual Defendant and counterclaim Plaintiff in the entitled matter.
3. I was the President of Newport Creamery, Inc. from March 12, 1999 through August 27, 2001.
4. I am a stockholder and officer of Rocomi Enterprises, LLC.
5. I have an ownership interest in the entities which control NewHart, LP, Newport Creamery, LP, and NewBerg, LP, and Tarpon Highland Development Corporation, and I have been responsible for the management of those entities.
6. I have read the factual averments in the above entitled matters; such averments are accurately derived from the business records

of the entities named, and, to the best of my knowledge and personal observation, are true.


Robert E. Swain

State of Rhode Island
County of Providence

On the 26th day of October, in the City of Providence, Robert E. Swain, known to me did attest and swear and depose, and affix his signature, in my presence, as set forth above.


Notary Public: Keven A. McKenna
My commission expires: August 8, 2003

CERTIFICATION

I hereby certify that on the 26^h day of October, 2001, I caused a copy of this answer to be mailed to Andrew Richardson, Trustee, and to his counsel, Boyajian, Harrington, and Richardson, 192 Waterman Street, Providence, Rhode Island 02903 and to John Fitzgerald, counsel for the United States Trustee, 11th Floor, Thomas P. O'Neill Federal Building, Boston, Massachusetts.

